

IT 95-27  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                                )  
                                )  
          v.                    )    No.  
                                )  
XXXXXX                        )    Hollis D. Worm  
          Taxpayer(s)         )    Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Hearing by XXXXX and XXXXX (hereinafter referred to as the "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on September 3, 1993. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers had failed to file an Illinois Income Tax return for the tax year ending December 31, 1989. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In the taxpayers' Protest they contend that they filed an Illinois income tax return for 1989, just as they had done every year since moving to Illinois in 1986. The hearing in this matter was held on November 22, 1994. The issues to be resolved are:

- (1). Whether the taxpayers failed to file an Illinois income tax return for the 1989 tax year?
- (2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001,

5/1005 and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be withdrawn in its entirety.

FINDINGS OF FACT:

1. For the subject taxable year, the taxpayers were Illinois residents, earned income in the State of Illinois, and filed an Illinois income tax return. Taxpayer Ex. No. 3

2. The Department of Revenue issued a Notice of Deficiency for the subject taxable year. Dept. Ex. No. 1

3. The taxpayers filed a timely Protest. Dept. Ex. No. 2

4. In their Protest, the taxpayers alleged that they filed an Illinois income tax return for the 1989 tax year, just as they have done every year since moving to Illinois in 1986. Dept. Ex. No. 2

5. The taxpayers filed income tax returns with the State of Illinois for the 1987, 1988, 1989, 1990, 1991, 1992 and 1993 tax years. Taxpayer Exs. No. 1 - 7

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayers, as Illinois residents who earned income in this state, were accordingly subject to Illinois income tax and were required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist. 1978). The taxpayers

have met that burden in this case.

The taxpayers presented evidence, consisting of copies of U.S. and IL-1040s, and credible testimony that they filed federal and state income tax returns with the State of Illinois for the tax years 1987 through 1994. The Department's own records indicate that the taxpayers filed state income tax returns for all of the above years except 1989. The taxpayers presented evidence which is consistent, probable, and identified with their books and records. *Fillichio v. Department of Revenue*, 15 Ill.2d 327 (1958) Accordingly, the taxpayers overcame the Department's prima facie case that no return was filed and no tax was paid for the 1989 tax year.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 , 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively. Having determined that the taxpayers filed and paid income tax for the 1989 tax year, the issue of imposition of these penalties is rendered moot.

It is my recommendation that this case be decided in favor of the taxpayers and against the Department and the Notice of Deficiency be withdrawn in its entirety.

Hollis D. Worm  
Administrative Law Judge

May 1, 1995